

APR 10 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YVONNE MESTRE, an individual;
MICHAEL MANAHAN, an individual,

Plaintiffs - Appellants,

v.

VIVENDI UNIVERSAL US HOLDING
CO., a Delaware corporation dba Universal
Pictures dba Universal Focus; VIVENDI
UNIVERSAL ENTERTAINMENT LLP, a
Delaware limited partnership dba
Universal Pictures dba Universal Focus;
UNIVERSAL STUDIOS, INC., a
Delaware corporation dba Universal
Pictures dba Universal Focus; FOCUS
FEATURES LLC, a Delaware limited
liability company dba Focus Features;
SCHOLASTIC, INC., a New York
corporation; LEE HALL, an individual;
PIPPA HALL, an individual and Does 1-
50 inclusiv.

Defendants - Appellees.

No. 05-35942

D.C. No. CV-04-00442-MWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon

^{*}This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Michael W. Mosman, District Judge, Presiding

Argued and Submitted November 9, 2007
Portland, Oregon

Before: FISHER and BERZON, Circuit Judges, and BARZILAY, Judge.**

Yvonne Mestre (“Mestre”) appeals the district court’s summary judgment in favor of the defendants in her copyright infringement claim. We have jurisdiction under 28 U.S.C. § 1338(a) and (b) and we affirm.

Mestre claims the author, producers, and others involved in the creation of the movie *Billy Elliot* (collectively, “the defendants”) stole her original screenplay, *The Sunday Hat*. Contending that there are genuine issues of material fact regarding both access and substantial similarity, she argues that the question of copyright infringement should be presented to the jury. Because we agree with the district court that the scripts are not substantially similar, we do not reach the question of access. *See Olson v. Nat’l Broad. Co., Inc.*, 855 F.2d 1446, 1448 (9th Cir. 1988).

Having reviewed the record, we conclude that there are some general similarities between *The Sunday Hat* and *Billy Elliott*. These similarities, however, do not extend beyond generic plot lines, or *scenes a faire*, which are not protected

**The Honorable Judith M. Barzilay, Judge, United States Court of International Trade, sitting by designation.

by copyright law. *See Funky Films, Inc. v. Time Warner Entm't*, 462 F.3d 1072, 1077 (9th Cir. 2006). Although “[a]t first blush, these apparent similarities appear significant[,] . . . an actual reading of the two works reveals greater, more significant differences and few real similarities at the levels of plot, characters, themes, mood, pace, dialogue or sequence of events.” *Id.* at 1078. Moreover, even if “[t]he particular sequence in which an author strings a significant number of unprotectable elements can itself be a protectable element” in certain contexts, Mestre has not demonstrated sufficient similarities in sequence to qualify for such protection. *Metcalf v. Bochco*, 294 F.3d 1069, 1074 (9th Cir. 2002); *see Rice v. Fox Broad. Co.*, 330 F.3d 1170, 1179 (9th Cir. 2003) (limiting *Metcalf* to its facts).

AFFIRMED.